

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ROSE CHAREUNSAK,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

) Case No. DEMO-03-0038

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member. The hearing was held at Fircrest School, 15230 15th Avenue NE, Administration Building, Shoreline, Washington, on February 11, 2005.

1.2 **Appearances.** Appellant Rose Chareunsap was present and was represented by Edward Earl Younglove III, Attorney at Law, of Parr, Younglove, Lyman & Coker, P.L.L.C. Paige Dietrich, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for neglect of duty, gross misconduct and willful violation of agency policy. Respondent alleges Appellant subjected a client to emotional abuse.

II. FINDINGS OF FACT

2.1 Appellant Rose Chareunsap is a permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on December 22, 2003.

2.2 Appellant began her employment with the Department of Social and Health Services in 1989. As an Attendant Counselor 2, Appellant worked with clients suffering from PICA, a disorder that causes them to ingest items that should not be consumed because it causes them extreme harm.

2.3 Appellant has no history of formal disciplinary action; however, on July 1, 2003, Appellant received a letter of reprimand for leaving items out where unattended clients could access and potentially consume them.

2.4 Respondent has adopted policies and procedures that prohibit abuse and neglect. Policy No. I.A.01 defines resident abuse/neglect as “an act of physical or mental mistreatment ... which harms or threatens a person through action or inaction by another individual.” Respondent’s policy defines emotional/verbal abuse as “action, either overt or subtle, which causes mental injury or emotional distress to the individual.” Respondent’s reporting procedures require that staff immediately report observed or suspected abuse and neglect or negligent treatment to the duty officer or a supervisor.

2.5 By letter dated December 9, 2003, Asha Singh, MD, Superintendent of Fircrest School, notified Appellant of her demotion from her position as an Attendant Counselor (AC) 2 to a position as a Food Service Aide 1, effective on December 26, 2003. Dr. Singh charged Appellant

1 with neglect of duty, gross misconduct and willful violation of agency policy. Dr. Singh
2 specifically alleged that on July 29, 2003, Appellant thrust a pillow toward an agitated resident,
3 S.H., while making grunting noises, which caused the resident to become further agitated.

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5 2.6 Appellant denies that she thrust a pillow toward S.H. or that she made grunting noises at
6 him. Rather, she testified that on July 29, at approximately 6:30 p.m., she was working with
7 resident S.H., who was naked in the hallway of the residence. S.H. is nonverbal and had a habit of
8 stripping and tossing the bedding/pillows from his room into the hallway. On this particular
9 evening, Appellant described S.H. as agitated and stated he had thrown a pillow from a room into
10 the hallway and was resisting Appellant's attempts help dress him. S.H.'s Personal Profile, under
11 Behavior, indicates as follows:

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13 [S.H.'s] aggression consists primarily of head butting. He usually gives you
14 adequate warning. If he approaches you leading with his head, hold out your arm
15 and let him make contact with your hand. He is usually OK with that.

16 2.7 Appellant claims that she picked up the pillow, threw it in a room and made repeated
17 attempts to dress S.H. However, S.H. was attempting to head butt her, and she repeatedly raised
18 her right arm to block him. Because she was unable to dress S.H., Appellant asked for help from
19 another employee, Mike Gant. Eventually Appellant and Mr. Gant assisted S.H. to his room.

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21 2.8 AC 1 Dominga Navarro was assisting another client and she was standing in the same
22 hallway, approximately 10 feet from where Appellant was working with S.H.

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24 2.9 Later that day, Appellant completed an Employee Report of Resident Assault form,
25 indicating that she suffered injuries to her right shoulder as a result of her repeated attempts to block
26 S.H.'s head butts.

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2 2.10 On July 30, Appellant completed another form entitled "Employee/Volunteer Personal
3 Incident Report" documenting the injury to her right shoulder resulting from using her arm to block
4 S.H.'s head butts. At approximately 9:30 p.m. that evening, Appellant approached Ms. Navarro,
5 who was seated with AC 3 Surgit Martin and AC 1 Penny Zimmer, and asked her to sign as a
6 witness on the Personal Incident Report.

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8 2.11 There is a dispute about what Appellant told Ms. Navarro. Ms. Martin and Ms. Navarro
9 both testified that Appellant said, "you saw [S.H.] hit me. Ms. Martin also testified that Ms.
10 Navarro told Appellant that she did not see S.H. hit Appellant but that she saw Appellant "with a
11 pillow."

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13 2.12 On the other hand, Ms. Zimmerman testified that Appellant asked Ms. Navarro to complete
14 the form and when Ms. Navarro asked "what's this for?" Appellant stated, "It's about [S.H.]" and
15 Appellant handed the form to Ms. Navarro. Ms. Zimmerman did not recall the word "pillow" being
16 used during the conversation. Appellant also denies that she told Ms. Navarro that S.H. hit her.

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18 2.13 During the conversation with Ms. Navarro, Appellant kept insisting that Ms. Navarro had
19 seen the incident and should fill out the form. Ms. Martin intervened and told Appellant that if Ms.
20 Navarro had not seen anything, she would have nothing to write. Appellant then departed.

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22 2.14 After Appellant departed, Ms. Martin told Ms. Ms. Navarro she had to file a report of
23 patient abuse. Ms. Navarro responded that she did not want to file a report and Ms. Martin insisted
24 that she do so. Ms. Navarro subsequently prepared a handwritten statement, which states, in part:

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26 ... there was a pillow on the floor in front of [S.H.]. I saw Rose picked (sic) up
the pillow and she pushed it towards [S.H.] and made grunting noises. This

1 making (sic) [S.H.] very upset due to antagonizing him. [S.H.] moves (sic) his
2 arms across his (sic) to protect his self. ...

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4 I did not report this earlier because I did not think she was teasing him. Then
5 later when I thought about I realized this was not a nice thing to do to [S.H.]. I
6 knew I should report this to my manager.

7 2.15 Regarding the incident of July 3, Ms. Navarro testified she saw Appellant pick up a pillow
8 and push it toward S.H., who waived his arms to push Appellant away. She also testified that she
9 did not file a resident abuse report because at the time she did not think there was anything wrong
10 with what she observed.

11 2.16 Ms. Navarro has worked as an AC 1 since 1995, and she is responsible by policy for
12 reporting suspected patient abuse. Furthermore, with her knowledge and experience, Ms. Navarro
13 should be able to identify abusive behavior. In this case, however, Ms. Navarro's failure to
14 immediately report suspected abuse and her reluctance to file a report even after Ms. Martin
15 directed her to do so calls into question her credibility and calls into question whether the
16 interaction she observed between Appellant and S.H. was abuse. On the other hand, Appellant's
17 actions, including the injury reports, and her insistence that Ms. Navarro sign a witness statement,
18 do not support the actions of an individual that engaged in or was attempting to hide abusive
19 behavior. Therefore, we find lack of convincing evidence to support that Appellant acted in an
20 abusive manner toward S.H.

21 2.17 Dr. Singh is the appointing authority for Fircrest School. In determining the level of
22 discipline, Dr. Singh reviewed Appellant's personnel file and the conduct investigation report. Dr.
23 Singh concluded Appellant emotionally abused S.H. by deliberately taking a pillow to stop his
24 head butting. Dr. Singh concluded that Appellant failed to treat S.H. with respect and dignity and
25 that her actions were contrary to the mission of the department and training provided on how to deal
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1 with clients. In determining what sanction to impose, Dr. Singh gave weight to the letter of
2 reprimand, because she believed the letter put Appellant on notice that she had to be careful with
3 clients. Dr. Singh testified that because Fircrest School is under a lot of scrutiny, she felt it was in
4 the best interest of clients to remove Appellant from patient care. Therefore, Dr. Singh concluded
5 that demotion to a position where Appellant would not provide one-on-one care to clients was
6 appropriate.

8 **III. ARGUMENTS OF THE PARTIES**

9 3.1 Respondent argues the evidence supports Appellant approached a resident, picked up a
10 pillow and thrust it toward him, causing him further agitation. Respondent argues that Appellant
11 has been inconsistent in her retelling of the incident, whereas Ms. Navarro has consistently given
12 the same account. Respondent argues that because Fircrest School houses very vulnerable patients,
13 the department must ensure that all employees exhibit high ethics and integrity in dealing with
14 residents. Respondent argues that in this case, demoting Appellant to a position where she had no
15 responsibility for patient care was the appropriate sanction.

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17 3.2 Appellant denies she abused S.H. in any manner and asserts her actions in blocking his
18 head butts complied with his behavior plan. Appellant argues that Ms. Navarro has been
19 inconsistent and that her failure to report any abusive behavior the night it occurred supports that
20 nothing out of the ordinary occurred. Appellant contends that none of the evidence presented
21 supports she engaged in cruel behavior toward S.H. and she asks the Board to reverse the
22 disciplinary sanction.

24 **IV. CONCLUSIONS OF LAW**

25 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.
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1 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
2 the charges upon which the action was initiated by proving by a preponderance of the credible
3 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
4 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
5 Corrections, PAB No. D82-084 (1983).

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7 4.3 Allegations regarding patient abuse are serious in nature, especially in an institutional
8 setting where residents are vulnerable and totally dependent on staff. Dr. Singh credibly conveyed
9 her concern about the department's duty to protect clients from abusive behavior. However,
10 Respondent has not met its burden of proof to support the charge that Appellant deliberately
11 aggravated S.H. by thrusting a pillow toward him and making grunting noises. Therefore, the
12 appeal of Rose Chareunsap should be granted

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14 **V. ORDER**

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Rose Chareunsap is granted.

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17 DATED this _____ day of _____, 2005.

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19 WASHINGTON STATE PERSONNEL APPEALS BOARD

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21 _____
22 Walter T. Hubbard, Chair

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24 _____
25 Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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